



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANDRE DIGGS,

Plaintiff,

-against-

POLICE OFFICER JOHN DOE,
ARRESTING OFFICER ID #959808;
POLICE OFFICER JOHN DOE,
ARRESTING OFFICER ID #953007,

Defendants.

21-CV-5849 (PAE) (KHP)

ORDER

KATHARINE H. PARKER, UNITED STATES MAGISTRATE JUDGE.

Defendants have moved to dismiss the Complaint pursuant to Rule 12(b)(6), and have submitted additional written materials in support of their motion. Specifically, Defendants have submitted in support of their motion a copy of a Domestic Incident Report dated August 17, 2020. The report indicates that an individual made a formal complaint to the police that Plaintiff was threatening to kill her and that Plaintiff “was outside screaming to kick the baby out of [her].” (ECF No. 35-1.) Defendants argue that they arrested Plaintiff based on those allegations. (ECF No. 33.)

This means that Defendants have asked the Court to decide this case without a trial, based on these written materials. **The Court notifies Plaintiff that the Court may treat Defendants’ motion to dismiss as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.** In short, Rule 56 provides that you may not oppose the motion simply by relying upon the allegations in your complaint. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by Defendants and raising specific facts that support your claim. For this reason, the claims

asserted in the Complaint may be dismissed without trial if you do not respond to the motion by filing sworn affidavits and/or other evidence in support of your claims.

By **Monday, December 19, 2022**, Plaintiff shall file a letter to the Court stating whether he disputes that an individual in fact complained to the police on August 17, 2020 that Plaintiff was threatening to kill her and that Plaintiff was outside screaming. If Plaintiff concedes that an individual did in fact make this complaint to the police on August 17, 2020, he should state that in his letter. If Plaintiff does not file a letter by December 19, the Court will assume that an individual did in fact make these complaints against Plaintiff to the police on the day in question.

The Clerk of Court is respectfully directed to mail a copy of this order as well as the documents at ECF Nos. 33-36 to Plaintiff at: Andre Diggs, 20-A-1664, Green Haven Correctional Facility, P.O. Box 4000, Stormville, NY 12582-4000.

Dated: November 16, 2022
New York, New York

SO ORDERED.



KATHARINE H. PARKER
United States Magistrate Judge